

INQUIRY INTO GIRALANG SHOPS—INTERIM REPORT

STANDING COMMITTEE ON PLANNING, TRANSPORT AND CITY SERVICES

DECEMBER 2021

REPORT 8

THE COMMITTEE

COMMITTEE MEMBERSHIP

Jo Clay MLA (Chair)
Suzanne Orr MLA (Deputy Chair)
Mark Parton MLA

SECRETARIAT

Ms Janice Rafferty Acting Secretary
Ms Joanne Cullen Acting Secretary

CONTACT INFORMATION

Telephone (02) 6205 0127
Post GPO Box 1020, CANBERRA ACT 2601
Email LACommitteePTCS@parliament.act.gov.au
Website <https://www.parliament.act.gov.au/parliamentary-business/in-Committees/Committees/ptcs>

RESOLUTION OF APPOINTMENT

On 2 December 2020 the Legislative Assembly resolved to establish the Standing Committee on Planning, Transport, and City Services.¹

Under the Resolution the Committee is responsible for examining the following areas:

- City Renewal Authority;
- Suburban Land Agency;
- Planning and Land Management;
- Transport;
- City Services including waste and recycling;
- Housing (excluding service provision); and
- Building and Construction.²

TERMS OF REFERENCE

On 3 March 2021 the Planning, Transport, and City Services Committee agreed to inquire into [Petition No 4-21](#) concerning Giralang Shops, lodged in the Assembly 10 February 2021 and seek on behalf of the Giralang community an update from the developer on the progression of the Giralang Shops Development.

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 2 December 2020, pp 17, 20, (as amended 11 February 2021, 30 March 2021, 22 April 2021, 16 September 2021 and 9 November 2021) available at: <https://www.parliament.act.gov.au/data/assets/pdf/0007/1669030/MoP002F.pdf>

² Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 2 December 2020, pp 17, 20, available at: <https://www.parliament.act.gov.au/data/assets/pdf/0007/1669030/MoP002F.pdf>

ACRONYMS

ACAT	ACT Administrative Appeals Tribunal
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ACTPLA	ACT Planning and Land Authority
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
CAO	Controlled Activity Order
DA	Development Application
DV	Draft Variation
EPSDD	Environment, Planning and Sustainable Development Directorate
GFA	Gross Floor Area
IGA	Independent Grocers of Australia
MOU	memorandum of understanding
NCDC	National Capital Development Commission

TABLE OF CONTENTS

THE COMMITTEE	I
Committee Membership	i
Resolution of appointment	iii
Terms of reference	iii
Acronyms	iv
RECOMMENDATIONS	VII
FINDINGS	IX
1 BACKGROUND	1
Conduct of Inquiry	2
Questions Taken on Notice	2
Acknowledgements	2
2 GIRALANG SHOPS SITE HISTORY	3
3 CURRENT (FIFTH) DA	8
Crown Lease	11
Memorandum of Understanding	14
4 SUPERMARKET POLICY	16
Deed of Settlement	19
5 GIRALANG COMMUNITY	22
Site Maintenance	23
Community consultation	25
Public Realm improvements	25
6 CONCLUSION	28
APPENDIX A - WITNESSES	29
27 May 2021	29
17 June 2021	29
1 July 2021	29

APPENDIX B – SUBMISSIONS.....	30
APPENDIX C – QUESTIONS TAKEN ON NOTICE.....	34

RECOMMENDATIONS

RECOMMENDATION 1

- 3.31 The Committee recommends that the ACT Government write to owner of the Giralang Shops site outlining the process for surrendering a crown lease to the ACT Government and seeking confirmation from the developer that whether surrendering the lease is something they will consider.

RECOMMENDATION 2

- 3.32 The Committee recommends that the owner of the Giralang Shops site respond to the ACT Government letter indicating their reasons for or against surrendering the crown lease.

RECOMMENDATION 3

- 3.33 The Committee recommends that the correspondence from Recommendations 1 and 2 be made publicly available.

RECOMMENDATION 4

- 3.37 The Committee recommends that if the owner of the Giralang Shops site determines they will not surrender the crown lease to the ACT Government that the owner of the Giralang Shops site enter a Memorandum of Understanding with the ACT Government which outlines the steps that will be taken to progress the development and the timeframes for these.

RECOMMENDATION 5

- 3.38 The Committee recommends that both the Owner of the Giralang Shops site and the ACT Government, in the Memorandum of Understanding, outline the steps they will take to support the progression and delivery of the Giralang Shops development.

RECOMMENDATION 6

- 3.39 The Committee recommends that the members of the Giralang community be included in the development of the Memorandum of Understanding.

RECOMMENDATION 7

- 3.40 The Committee recommends that the Memorandum of Understanding include but not be limited to the issues covered in the recommendations to this report.

RECOMMENDATION 8

- 3.41 The Committee recommends that the Memorandum of Understanding be made publicly available and be finalised no later than 30 June 2022.

RECOMMENDATION 9

- 3.42 The Committee recommends that should construction on the Giralang Shops site development have not recommenced by 30 June 2022 that the Memorandum of Understanding incorporate a clear and enforceable plan for temporary land use at the site so that the public can access and benefit from the social benefit intended from the zoning.

RECOMMENDATION 10

- 4.26 The Committee recommends that the ACT Government write to seek advice on whether:
- Harris Farm Supermarkets would consider opening in Canberra and in Giralang; and
 - Woolworths, Aldi and IGA would consider opening in Giralang.

RECOMMENDATION 11

- 5.14 The Committee recommends that the owner of the Giralang Shops site outline how the site will be tidied and secured in accordance with unmet commitments by the owner of the shops site and to a standard agreeable to the Giralang Community.

RECOMMENDATION 12

- 5.28 The Committee recommends that the owner of the Giralang Shops site commits to a date for the timely delivery of the public realm improvements which they indicated would be delivered as part of the proposed development.

RECOMMENDATION 13

- 5.29 The Committee recommends that the owner of the Giralang Shops Site and the ACT Government report to the committee on progress of the recommendations in the interim report by July 2022.

FINDINGS

FINDING 1

- 3.10 The Committee finds that the owner of the Giralang Shops site has not been able to confirm a tangible plan or timeline for how to and when they will deliver the shops development.

FINDING 2

- 3.19 The Committee finds that, for the development to move forward with confidence, greater transparency and accountability by all parties will be needed.

FINDING 3

- 4.15 The Committee finds that the current development approval could be amended to allow a larger supermarket and construction to begin within the time frames of the current approvals.

FINDING 4

- 4.23 The committee has significant concerns the deed of settlement signed by the owner of the Giralang Shops site applies limitations to the size of the supermarket permissible and could jeopardise the potential to secure a supermarket tenant.

FINDING 5

- 5.8 The Committee finds that some people within the Giralang community have lost confidence in the owner of Giralang shops site to deliver the shops development.

FINDING 6

- 5.9 The Committee finds that the Giralang community would like the ACT Government to take a more active role in helping to resolve issues currently holding up the development.

1 BACKGROUND

- 1.1 On 10 February 2021 petition 4-21³ was tabled in the Assembly, it was sponsored by Ms Suzanne Orr MLA, signed by 584 residents and sought an update on the progress of the Giralang shops development.
- 1.2 The full terms of Petition 4-21 were:
- The residents and supporters of Giralang note that:
 - the local shops in Giralang have sat unused and in a state of semi-development for 15 years;
 - progress has been made with the developer settling the legal action against them and gaining approval for a Development Application;
 - over the last 12 months however progress to build the shops has stalled with no supermarket secured and the development taken off the sales market;
 - the developer, who is ultimately responsible under the lease for progressing the shops, has provided only one clear update to the community in this time, which provided no clear indication of what happens next.
 - As such, the residents of Giralang hereby petition the ACT Legislative Assembly to:
 - seek a full update from the developer on any progress and when we can see action on delivering our shops.⁴
- 1.3 The petition was referred to the Standing Committee on Planning, Transport and City Services under Standing Order 99A⁵. On 3 March 2021 the Committee resolved to inquire into and report on petition 4-21. The Committee advised the Assembly of this decision through a 246A statement in the Assembly on 30 March 2021⁶.

³ Legislative Assembly for the ACT, *Minutes of Proceedings No 5*, 10 February 2021, p 57, available at: https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/1700917/MoP005F3.pdf

⁴ Legislative Assembly for the ACT, *Petition 4-21*, <https://epetitions.act.gov.au/PaperPetitions.aspx> (accessed 22 November 2021)

⁵ The standing orders and continuing resolutions of the Assembly, March 2021, standing order 99A, available at: https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/standing-orders/standing_orders

⁶ Legislative Assembly for the ACT, *Minutes of Proceedings No 7*, 30 March 2021, p 88, available at: https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/1734427/MoP007F3.pdf

CONDUCT OF INQUIRY

- 1.4 The Committee issued a call for submissions on 12 March 2021, which initially closed on 8 April 2021, and later extended this call for submissions to 14 May 2021, 69 submissions were received by the Committee. A list of these is provided at [Appendix B](#).
- 1.5 The Committee held three public hearings, 27 May 2021, 17 June 2021 and 1 July 2021, and heard from 14 witnesses. A list of witnesses who appeared before the Committee is provided at [Appendix A](#). The transcripts of proceedings are accessible at https://www.hansard.act.gov.au/hansard/2021/comms/default.htm#6_ptcs.

QUESTIONS TAKEN ON NOTICE

- 1.6 A total of 13 questions were taken on notice by witnesses, the Minister and Directorate officials during the hearings.
- 1.7 The list of questions (by subject, submitter, recipient) are available at [Appendix C](#), and answers to questions are accessible on the inquiry webpage at: <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/ptcs/inquiry-into-giralang-shops>.

ACKNOWLEDGEMENTS

- 1.8 The Committee thanks everyone who submitted to, appeared as a witness, or otherwise assisted, this inquiry. This includes representatives from Giralang Properties, the Minister for Planning and Land Management, Directorate officials, community members, and secretariat staff of the Office of the Legislative Assembly.

2 GIRALANG SHOPS SITE HISTORY

2.1 The Committee notes that it has been 17 years since the supermarket closed in Giralang and that redevelopment of the site has been stalled since that time.

2.2 Mr Dimitri Nikias, Director, Nikias Diamond, representing Giralang Properties who are the crown lessee of the Giralang Shops site, in his opening statement to the Committee at the public hearing of 27 May 2021 stated that:

By way of personal background, my father was one of four Nikias brothers who purchased this site in 1975, when there were only 27 houses in Giralang. Our family built the shops and ran the supermarket, which my cousin and his extended family eventually took over. After the new Kaleen shopping centre opened in the late 1990s, turnover declined to such an extent that even free rent for three years was not enough to sustain the business, and they were forced to close in 2005, together with the other tenancies.⁷

2.3 Mr Nikias also stated that the redevelopment of the Giralang shops has been an issue for a long time with four failed Development Applications (DA), legal challenges and changes to planning policy on the size of supermarkets allowed in local centres.⁸

2.4 Major dates in the Giralang shops development timeline are:

- 31 October 2004—Giralang supermarket closes, only two shops remain in the shopping centre, the Giralang Tavern and a Vietnamese restaurant;⁹
- 6 April 2006—Minister for Planning, Mr Simon Corbell MLA, changed regulations in relation to varying the lease on a block so that a change of use fee would now be paid by all developers. Under the previous regulations ‘developers of local centres had been able to seek a 100 per cent remission of the change of use charge where they could make the case that the centre was no longer viable, or it would cease to be viable within three years if the lease was not varied’. Mr Corbell says that anyone wanting to ‘vary, consolidate or subdivide their lease would pay the same change of use charge, which is set at 75 per cent of the added value of the charge’;¹⁰
- 2006—the two remaining shops at Giralang close;¹¹

⁷ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 2.

⁸ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 2.

⁹ Andrew Kazar, ‘Giralang IGA shuts its doors’, *North Side Chronicle*, 2 November 2004, p 8

¹⁰ Mr Jon Stanhope MLA, Chief Minister, ‘Minister makes changes to support local shopping centres’, *Media Release*, 7 April 2006.

¹¹ John Thistleton, ‘Giralang residents want shops retained’, *Canberra Times*, 12 September 2008, p 7.

- 2007—Nikias Nominees Pty Ltd, owner of Block 4 Section 79 Giralang applied for the direct sale of Block 5 Section 79 Giralang, which is contiguous with Block 4. It is proposed under a draft Crown Lease that Block 5 will be consolidated with Block 4;¹²
- 6 March 2008—DA for 13 townhouses and three small shops (350 square metres) to replace the Giralang shopping centre was lodged with ACT Planning and Land Authority (ACTPLA);¹³
- 6 September 2008—DA for 13 townhouses and three small shops was rejected by ACTPLA as it did not meet the requirements for local centre land use policies of the Territory Plan;¹⁴
- 17 March 2009—Second DA proposing a new two storey shopping centre including a Woolworths supermarket (3000 square metres), five smaller retail outlets and underground parking is lodged with ACTPLA.¹⁵ The application also applied for the consolidation of Block 5 with Block 4;¹⁶
- 3 September 2009—Second DA was rejected by ACTPLA as it was too big, and therefore not compatible with local centre land use policies of the Territory Plan;¹⁷
- 1 March 2010—Third DA proposing a reduced floor area for a Woolworths supermarket (1667 square metres), two to three smaller retail outlets, and underground and surface car parking¹⁸ is lodged with ACTPLA. The DA was amended and also including an application for the consolidation of Block 5 with Block 4;¹⁹
- 5 October 2010—Third amended DA is approved by ACTPLA;
- March 2011—Third DA approval was challenged in the ACT Administrative Appeals Tribunal (ACAT) by several parties. At the request of the parties, ACAT made consent orders that ACTPLA's approval be set aside and substituted with a decision that the application was refused²⁰, Nikias Nominees Pty Ltd surrendered the planning approval;²¹

¹² [Select Committee on ACT Supermarket Policy](#), August 2012, p 57.

¹³ [Select Committee on ACT Supermarket Policy](#), August 2012, p 57.

¹⁴ [Select Committee on ACT Supermarket Policy](#), August 2012, p 57.

¹⁵ Jessica Cumming, 'Shopping Centre Boost', *North Side Chronicle*, 31 March 2009, p 8.

¹⁶ [Select Committee on ACT Supermarket Policy](#), August 2012, p 57.

¹⁷ [Select Committee on ACT Supermarket Policy](#), August 2012, p 57.

¹⁸ John Thistleton, 'Proposed Giralang shopping centre will hurt trade for Kaleen shops', *Canberra Times*, 5 March 2010, p 7.

¹⁹ [Select Committee on ACT Supermarket Policy](#), August 2012, p 57.

²⁰ [Select Committee on ACT Supermarket Policy](#), August 2012, p 57.

²¹ John Thistleton, 'Plan for Giralang Woolies shelved', *Canberra Times*, 23 March 2011, p 2.

- 27 April 2011—Fourth DA proposing supermarket (1500 square metres), four specialty shops, underground and above ground car parking²² and included an application for the consolidation of Block 5 with Block 4;²³
- 17 August 2011—Minister for the Environment and Sustainable Development Mr Simon Corbell MLA exercised his call-in powers under division 7.3.5 of the *Planning and Development Act 2007* to approve the redevelopment of the Giralang shopping centre, which will include the establishment of a 1500 square metre Woolworths supermarket.²⁴ Following this decision, the Minister made a statement to the Legislative Assembly pursuant to section 161(2) of the *Planning and Development Act 2007*;²⁵
- September 2011—Owners of nearby Kaleen and Evatt Independent Grocers of Australia (IGA) supermarkets, Kaleen shop owners and residents launch a Supreme Court challenge against the Minister for approving the Giralang shop DA;²⁶
- 6 July 2012—Justice Burns of the ACT Supreme Court refused an application by the owners of Kaleen and Evatt IGA supermarkets and local residents to appeal against the decision of the Minister for the Environment and Sustainable Development to approve the redevelopment of Giralang shopping centre;²⁷
- August 2012—ACT Government proposed a cap on the size of supermarkets in local centres to a maximum of 1000 square metres;²⁸
- 10 December 2012—Direct sale of Block 5 Section 79 Giralang to Nikias Nominees Pty Ltd by ACPLA;²⁹
- 19 March 2013—Draft Variation 304—Commercial Zones Development Code is released by the ACT Government to help protect smaller independent supermarkets as ‘currently supermarkets in local centres have no gross floor area limits, but under DV 304, the display and selling area will be limited to 1000m²’;³⁰

²² Noel Towell, ‘Corbell approves Giralang proposal’, *Canberra Times*, 23 March 2011, p 2.

²³ *Select Committee on ACT Supermarket Policy*, August 2012, p 58.

²⁴ *Select Committee on ACT Supermarket Policy*, August 2012, p 2.

²⁵ Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development, ‘Call-in powers—block 475, section 79, Giralang—Paper and statement by minister’, Legislative Assembly for the ACT, Debates, 23 August 2011, pp 3667–3668.

²⁶ Bianca Hall, ‘Giralang saga drags on as fresh supermarket inquiry launched’, *Canberra Times*, 23 September 2011, p 3.

²⁷ *Select Committee on ACT Supermarket Policy*, August 2012, pp 4–5.

²⁸ Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development, ‘Labor Government supporting local supermarkets in local centres’, *Media Release*, August 2012.

²⁹ Freedom of Information No EDD26072013_0002—Block 5 Section 79 Giralang https://www.cmtedd.act.gov.au/open_government/foi/edd/block-5-section-79-giralang (accessed 25 November 2021).

³⁰ Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development, ‘ACT Government moves to protect local supermarkets’, *Media Release*, 19 March 2013.

- 29 November 2013—ACT Court of Appeal upholds Justice Burns decision (6 July 2012) to allow the development at Giralang shops to proceed;³¹
- 16 May 2014—High Court grants permission to challenge the decisions by the ACT Supreme Court and ACT Court of Appeal in relation to the economic impacts of a development for a ‘person aggrieved’;³²
- 10 December 2014—High Court³³ partially upheld the appeal in that the appellants were found to be ‘persons aggrieved’ by the Giralang shops redevelopment. The High Court sent the matter back to the ACT Court of Appeal to review the decision;³⁴
- 9 September 2016—ACT Court of Appeal³⁵ dismissed the challenge to the Minister’s approval for a large supermarket development at the Giralang shops, the two IGA supermarket operators made a statement saying they were disappointed in the decision but were ‘pleased to resolve’ the dispute ‘prior to the decision being handed down’;³⁶
- September 2016—Woolworths withdraws as an anchor tenant for the proposed Giralang supermarket development;³⁷
- 7 March 2018—Fifth DA lodged for a four storey development to include a 1000 square metre supermarket, five smaller commercial or community tenancies, basement and surface car parking and 50 residential apartments;³⁸
- 24 July 2018—Minister for the Planning and Land Management Mr Mick Gentleman MLA exercised his call-in powers under division 7.3.5 of the [Planning and Development Act 2007](#) to approve the redevelopment of the Giralang shopping centre, which will include the establishment of a 1000 square metre supermarket, mixed use ground floor spaces, basement parking and 50 apartments over four levels;³⁹
- April 2020—Mr Nikias has reported that ‘the company had not been able to secure a supermarket for the \$19 million mixed-use development, and as a result, it would now have to explore other options for the site, which remains fenced off with the project on hold’;⁴⁰

³¹ Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development, ‘Supreme Court ends Giralang saga’, *Media Release*, 29 November 2013.

³² Michael Inman, ‘Retailers’ Giralang fight goes to High Court’, *Canberra Times*, 17 May 2014, p 3.

³³ [Argos Pty Ltd v Corbell, Minister for the Environment and Sustainable Development](#), [2014] HCA 50, 10 December 2014 C3/2014.

³⁴ Clare Colley and Michael Inman, ‘Battle of shops goes back to appeal’, *Canberra Times*, 11 December 2014, p 3.

³⁵ [Cavo Pty Ltd v Simon Corbell, Minister for the Environment and Sustainable Development](#), [2016] ACTCA 45.

³⁶ ‘Appeal against Giralang shops plan dismissed’, *Canberra Times*, 10 September 2016, p 6.

³⁷ Matthew Raggatt ‘Woolies pulls the plug’, *Canberra Times*, 11 September 2016, p 1.

³⁸ Blake Folden ‘Residents back plan to end decade-long wait for shops’, *Canberra Times*, 27 April 2018, p 1.

³⁹ Mr Mick Gentleman MLA, answer to [Question Taken on Notice No 11](#), 30 June 2021, p [1 of attachment].

⁴⁰ Ian Bushnell ‘Giralang shops development on ropes without supermarket tenant’, *RiotACT*, 15 April 2020, p 21

- 11 May 2021—Minister for the Planning and Land Management announces a change in supermarket size at local shopping centres to increase the cap for local centre supermarkets from 1000 square metres to 1500 square metres through DV381—Local Centre shop size;⁴¹ and
- 11 November 2021—Mr Nikias stated that a “different national chain” was assessing the site and “hopefully we will a supermarket there up and running within the short term”.⁴²

⁴¹ Mr Mick Gentleman MLA, Minister for Planning and Land Management, ‘Helping Canberra’s local shops thrive’, *Media Release*, 11 May 2021.

⁴² Miriam Webber, ‘Pop-up café to open on site of Giralang shops’, *Canberra Times*, 11 November 2021, p 3.

3 CURRENT (FIFTH) DA

3.1 The Committee notes the time elapsed from the original closure of the shops in 2004, four failed DAs and the lack of progress on the site under the current 2018 approved DA.

3.2 Mr Ken Matthews AO states that:

Giralang's original design clustered our suburb around a central service precinct comprising the school, the local shops, and a range of local services. Roads and footpaths gravitated downwards to the base of an amphitheatre-like landform where the shops and school were established. The planning concept - which attracted many of the original residents to buy into the suburb - was that the central service precinct would be both the geographic and social 'heart' of the suburb. It would be the place where the community would meet, interact with their neighbours, and strengthen the community. However when the shops closed we abruptly lost the heart of our suburb.⁴³

3.3 Giralang Property Pty Ltd is the lessee of Block 6 Section 79, Giralang. On 7 March 2018 a fifth DA was lodged for the development of the site at 7 Menkar Close, Giralang. On 24 July 2018, Minister for the Planning and Land Management Mr Mick Gentleman MLA (the Minister) exercised his call-in powers under division 7.3.5 of the [Planning and Development Act 2007](#) to approve DA 201833501 and 201833501/S144B.⁴⁴ The Minister outlined in his answer to [Question Taken on Notice No 11](#) that the approval was for:

- construction of a mixed use development comprising of the following: two basement levels; ground floor level commercial use consisting of a 1000m² supermarket and other commercial tenancies; four levels residential use containing 50 residential units; and landscaping and associated works;
- civil works including new driveway entry points off Canopus Crescent; new off-site/on-street car parking to Menkar Close; and a reconfigured carpark and new drop-off arrangement to existing Giralang Primary School car park on Block 4 Section 80;
- a lease variation to add multi unit housing of not more than 50 dwellings, community activity centre, community theatre, cultural facility, educational establishment, place of worship, and religious associated use; and increase the maximum gross floor area permitted to 11,000m²; and
- to subdivide Block 6 Section 79.⁴⁵

⁴³ Mr Ken Matthews AO, [Submission No 6](#), p [1].

⁴⁴ Mr Mick Gentleman MLA, Minister for Planning and Land Management, 'Call-in powers—block 6, section 79, Giralang—Paper and statement by minister', Legislative Assembly for the ACT, Debates, [2 August 2021](#), pp 2648-2649.

⁴⁵ Mr Mick Gentleman MLA, answer to [Question Taken on Notice No 11](#), received 30 June 2021, p [1 of attachment].

- 3.4 The Committee heard about the arrangements for lease extensions and completion dates for the development of the Giralang shops site.
- 3.5 The Minister stated in the answer to [Question Taken on Notice No 8](#) that:
- the time to complete works in a Crown lease can be extended indefinitely under section 298B of the [Planning and Development Act 2007](#) (the Act);
 - should more time be required, after the fifth year a fee is charged each year using a formula set out in the Act;
 - there has been no request to waive fees for the development of Giralang shops.⁴⁶
- 3.6 Mr Ben Ponton, Director-General, Environment, Planning and Sustainable Development Directorate (EPSDD) also noted that the current DA runs through to July 2023.⁴⁷
- 3.7 Mr Nikias told the Committee in relation to development intent that:
- Despite many setbacks, Giralang Properties have remained fully committed to achieving a successful, substantial redevelopment of our lease. This can be evidenced by our repeated DA applications. At no time have we stopped trying to find the right solution for a financially viable centre that will be here for the long term. We reject any notion that we have been land banking. That does not make sense financially for us, given that we have invested so much time, money and effort to date in trying to get up a successful development. We remain committed to finding a viable commercial solution for the shops.⁴⁸
- 3.8 Mr Nikias also noted that funds would need to be borrowed to complete the project and that the lender needs evidence that the project will be viable before lending any money. A supermarket tenant is crucial to the project's viability, it cannot proceed without one as an anchor tenant. This also helps attract other business to the centre as there will be a critical mass of economic activity at the shops.⁴⁹
- 3.9 Mr Nikias states in the answer to [Question Taken on Notice No 2](#) that 'approval has been given for the approved works to commence by 24 July 2023'.⁵⁰ This point is reinforced by Mr Nikias in the answer to [Question Taken on Notice No 4](#) which states that there is no completion date in the DA, however the approval requires work to commence by 24 July 2023.⁵¹

⁴⁶ Mr Mick Gentleman MLA, answer to [Question Taken on Notice No 8](#) received 30 June 2021, p [1].

⁴⁷ Mr Ben Ponton, *Transcript of Evidence*, 17 June 2021, p 34.

⁴⁸ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 2.

⁴⁹ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 3.

⁵⁰ Mr Dimitri Nikias, answer to [Question Taken on Notice No 2](#), received 4 June 2021, p 4.

⁵¹ Mr Dimitri Nikias, answer to [Question Taken on Notice No 4](#), p 7.

Finding 1

3.10 The Committee finds that the owner of the Giralang Shops site has not been able to confirm a tangible plan or timeline for how to and when they will deliver the shops development.

- 3.11 Petition 4-21 seeks ‘a full update from the developer on any progress and when we can see action on delivering our shops’.⁵²
- 3.12 The Canberra Times reported in an article on the petition that the community was last updated by the developer in ‘April 2020’ when they were advised the development had failed due to the lack of an anchor supermarket tenant.⁵³
- 3.13 The Committee notes that many submissions to the inquiry noted the lack of progress over many years and the community frustration with the process.
- 3.14 Ms Margaret Matthews states ‘we need something to be done and we need the government and the developer to work together to solve this mess’.⁵⁴
- 3.15 Mr Robert Kyle noted that the inquiry into the Giralang shops delay and lack of updates from the developer is long overdue. ‘Like many other Giralang residents, I feel completely let down by the current development process ... the ACT Government has failed to communicate with the community and has failed to ensure this "Development" is progressed’.⁵⁵
- 3.16 Ms Anne Gibson noted that:
- it is my understanding the ACT Government has failed several times to take action to hold the developer to account in relation to the conditions in various development approvals. This has enabled the developer to act in their own interest – ie [i.e.] to delay construction until an anchor tenant has been secured. This is not in the interests of the community. I urge the Committee to review the actions of the ACT Government in enforcing conditions of the DA and Crown Lease, and make recommendations that the Government take swift, concrete action to resolve the situation. Setting dates and hard milestones with serious consequences would be one such way of ending this saga. The residents of Giralang would like to see the ACT Government work with the developer to find solutions, not to enable their continued inaction on this matter.⁵⁶

⁵² Legislative Assembly for the ACT, *Petition 4-21*, <https://epetitions.act.gov.au/PaperPetitions.aspx> (accessed 22 November 2021)

⁵³ Jasper Lindell, ‘Petitioners call for Giralang site update’, *Canberra Times*, 14 February 2021, p 2.

⁵⁴ Ms Margaret Matthews, [Submission No 18](#), p [2].

⁵⁵ Mr Robert Kyle, [Submission No 12](#), p [1].

⁵⁶ Ms Anne Gibson, [Submission No 14](#), pp [1–2].

- 3.17 Ms Amy Pepper agreed with this sentiment stating ‘I have been disheartened by the lack of action but also the lack of care for our community ... The community is worn-out from this saga and feel powerless at our lack of choice. Both the Government and the leasee [lessee] need to be accountable for their lack of action and compassion for the Giralang community’.⁵⁷
- 3.18 Dr Nick Thomson noted that the development had been stuck in a holding pattern waiting for an anchor tenant. With the change of policy to allow a 1500 square metre supermarket the ACT Government could facilitate a conclusion to the project by allowing an amendment to the current DA rather than going through the whole process of a new DA.⁵⁸

Finding 2

3.19 The Committee finds that, for the development to move forward with confidence, greater transparency and accountability by all parties will be needed.

CROWN LEASE

- 3.20 The Committee heard about the failure of the lessee to meet the terms of the Crown Lease.
- 3.21 Ms Simone Hijazi states that ‘I’m not aware of any terms in the Crown Lease that allow a Lessee to dictate the terms under which development is to commence; why do you consider it is acceptable to be in breach of this timeframe and to leave residents of Giralang waiting indefinitely for a local shopping centre’.⁵⁹
- 3.22 This is a view was supported by a number of other submitters:
- Mr Austin Kenney—‘it is hard to imagine a justification for a business holding a lease of this nature and not using it for its intended purpose ... the time has come to end the lease and find a new leaseholder for the Giralang shops site. Action should now be taken to end the lease’;⁶⁰
 - Ms Penny Costello—‘the ACT Government should put an ultimatum to the developer, either develop the block or sell the land so that another developer can build something that will benefit the community as a whole’;⁶¹

⁵⁷ Ms Amy Pepper, [Submission No 43](#), p [1].

⁵⁸ Dr Nick Thomson, *Transcript of Evidence*, 1 July 2021, p 56.

⁵⁹ Ms Simone Hijazi, [Submission No 3](#), p [1].

⁶⁰ Mr Austin Kenney, [Submission No 20](#), p [1].

⁶¹ Ms Penny Costello, [Submission No 25](#), p [1].

- Mr Aidan Heerdegen and Ms Janell Kennard—‘hold the Lessee to account for being in breach of its obligations under the Crown Lease for the Block ... if the lease conditions are not met after this time, ... revoke the lease and find a lessee who IS interested in creating a vibrant local centre in Giralang’;⁶²
- Mr Sean Macintyre—‘If the developer can not deliver, then it is time for the developer to relinquish its lease, either voluntarily or be made to by the government’;⁶³ and
- Ms Eve Wisowaty—‘I call on the Government to take action to resolve this situation if the developer is not willing to start and complete the development the Government should call in the lease and find a developer who will do so’.⁶⁴

3.23 The Committee heard from Mr Mick Gentleman MLA, Minister for Planning and Land Management and officials about lease termination.

3.24 The Minister noted that:

We do not do a great deal of lease enforcement. We look at ensuring that we can get the best outcomes for proponents and for the ACT community by assisting proponents to meet the needs in the lease. The briefing to me is that it would be a very lengthy process if you were to go down the enforcement track. At this point, we have chosen to use the opportunity to assist proponents, and assist the community as well, rather than going down enforcement tracks. That could change in the future, but at this time that is our choice.⁶⁵

3.25 The Minister stated in the answer to [Question Taken on Notice No 6](#) that there has been three attempts to terminate a lease under the *Planning and Development Act 2007*:

- Dunlop—notice to terminate was issued 22 March 2012, the lessee appealed, an agreement was reached between lessee, bank and ACTPLA to discontinue proceedings, the block was allowed to be sold by the bank at market value and it was ultimately developed in 2015;
- McKellar—notice to terminate was issued 29 July 2013, the lessee appealed, ACTPLA negotiated a Controlled Activity Order (CAO), ACAT proceedings discontinued, the lessee continues to finalise the construction work; and
- Waramanga—notice to terminate was issued 12 September 2013, the lessee appealed, ACAT set aside the ACTPLA notice of termination and made a decision with directions, the site has since become a deceased estate and the block was on-sold in November 2020.⁶⁶

⁶² Mr Aidan Heerdegen and Ms Janell Kennard, [Submission No 30](#), p [1].

⁶³ Mr Sean Macintyre, [Submission No 38](#), p [1].

⁶⁴ Ms Eve Wisowaty, [Submission No 40](#), p [1].

⁶⁵ Mr Mick Gentleman, *Transcript of Evidence*, 17 June 2021, p 33.

⁶⁶ Mr Mick Gentleman MLA, answer to [Question Taken on Notice No 6](#), pp [1–3].

- 3.26 Mr Ponton noted that in relation to lease compliance issues and decision to terminate a lease:
- the Directorate would need to look at if there has been an attempt to develop the site, in the case of Giralang development was commenced on a 2011 DA which stalled because of court challenges;
 - the conditions of the current DA which require the development to have commenced by July 2023, there is currently no breach for this DA; and
 - it would be unlikely that Access Canberra would seek to take any compliance action as there is currently a valid DA in place.⁶⁷
- 3.27 Mr Nikias states that ‘I cannot predict the future; all I can tell you is that we are committed. It is five DAs and \$4 million or \$5 million worth of commitment. It is not exactly something we have been walking away from’.⁶⁸
- 3.28 Mr Nikias also noted that funds would need to be borrowed to complete the project, the lender needs evidence that the project will be viable before they will lend money, without an anchor tenant we are unable to proceed.⁶⁹
- 3.29 The Committee noted that residents in Giralang had received correspondence from the developer indicating that he would be undertaking a new DA process.⁷⁰
- 3.30 The Committee also heard from Mr Nikias that a new DA would be needed:
- When the ACT government changed its policy on 7 May this year to provisionally allow supermarkets of up to 1,500 metres, it was a game changer. We immediately went back to our prospects and there were encouraging signs of interest. Even if we get that firm supermarket commitment, we anticipate that we will have to submit a new DA for a larger supermarket with new designs and new community guidelines. We know that going through the planning process will take time and will most likely attract opposition again from economic interests outside Giralang.⁷¹

⁶⁷ Mr Ben Ponton, *Transcript of Evidence*, 17 June 2021, p 34.

⁶⁸ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 22.

⁶⁹ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 3.

⁷⁰ Ms Suzanne Orr MLA, *Transcript of Evidence*, 1 July 2021, p 56.

⁷¹ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 3.

Recommendation 1

- 3.31 The Committee recommends that the ACT Government write to owner of the Giralang Shops site outlining the process for surrendering a crown lease to the ACT Government and seeking confirmation from the developer that whether surrendering the lease is something they will consider.**

Recommendation 2

- 3.32 The Committee recommends that the owner of the Giralang Shops site respond to the ACT Government letter indicating their reasons for or against surrendering the crown lease.**

Recommendation 3

- 3.33 The Committee recommends that the correspondence from Recommendations 1 and 2 be made publicly available.**

MEMORANDUM OF UNDERSTANDING

- 3.34 A memorandum of understanding (MOU) is a preliminary written agreement that outlines a framework or key terms. MOU's are often used in commercial partnerships to establish mutual goals and expectations. Generally speaking, a MOU is not legally binding, however it a useful tool because it helps ensure all parties work towards the same goals.⁷²
- 3.35 The Committee heard from Mr Nikias that Nikias Diamond was committed to developing the Giralang shops site however it was dependent on the site being commercially viable before it could proceed.⁷³
- 3.36 The Committee notes that if the lease is not surrendered by the lessee Giralang Properties, the community wants the developer and the ACT Government to both work together to find a viable solution for getting the Giralang shops built in a timely manner through a MOU.

⁷² Eugenia Munoz, *What is a memorandum of understanding?*, 6 October 2021, <https://legalvision.com.au/memorandum-of-understanding/> (accessed 1 December 2021)

⁷³ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 2.

Recommendation 4

- 3.37** The Committee recommends that if the owner of the Giralang Shops site determines they will not surrender the crown lease to the ACT Government that the owner of the Giralang Shops site enter a Memorandum of Understanding with the ACT Government which outlines the steps that will be taken to progress the development and the timeframes for these.

Recommendation 5

- 3.38** The Committee recommends that both the Owner of the Giralang Shops site and the ACT Government, in the Memorandum of Understanding, outline the steps they will take to support the progression and delivery of the Giralang Shops development.

Recommendation 6

- 3.39** The Committee recommends that the members of the Giralang community be included in the development of the Memorandum of Understanding.

Recommendation 7

- 3.40** The Committee recommends that the Memorandum of Understanding include but not be limited to the issues covered in the recommendations to this report.

Recommendation 8

- 3.41** The Committee recommends that the Memorandum of Understanding be made publicly available and be finalised no later than 30 June 2022.

Recommendation 9

- 3.42** The Committee recommends that should construction on the Giralang Shops site development have not recommenced by 30 June 2022 that the Memorandum of Understanding incorporate a clear and enforceable plan for temporary land use at the site so that the public can access and benefit from the social benefit intended from the zoning.

4 SUPERMARKET POLICY

4.1 The Committee notes that the changing supermarket floor policy in relation to gross floor area has had an impact on the stalled development of the Giralang shops site.

4.2 Mr Nikias states in the answer to [Question Taken on Notice No 5](#) that:

We are the original and only owners of the site. We have a long commitment to the area and we remain fully committed to delivering a commercially viable shopping centre for Giralang. We had an approved development application with a signed agreement from Woolworths and commenced building in 2011 – only to be stopped by the commencement of legal proceedings by development objectors who took us to the High Court. Since then we have spent \$4–5 million defending our right to build a viable supermarket on the site in the face of relentless legal action against us. The legal challenge was based on an argument around an error in the approval decision of the approving authority. The market pressures which made a 1000 sqm supermarket unviable (following the ACT Government’s restrictions) would be the same for anyone who had the site. This has been the experience also with other local centres around Canberra. The ACT Government’s change in policy in May this year to allow 1500 sqm supermarkets for local centres (at present on a basis that has only interim effect) has shifted the goalposts again but for the better and we are optimistic about securing the anchor tenant needed to make the project a long term success.⁷⁴

4.3 On 16 June 2009, Mr John Martin was appointed by the then Chief Minister, Mr Jon Stanhope, as an expert advisor to the ACT Government’s Review of Supermarket Competition Policy, based on the recommendation of the Australian Competition and Consumer Commission (ACCC) recommendation that:

... all appropriate levels of government consider ways in which zoning and planning laws, and decisions in respect of individual planning applications where additional retail space for the purpose of operating a supermarket is contemplated, should have specific regard to the likely impact of the proposal on competition between supermarkets in the area.⁷⁵

4.4 The ACT Government adopted the recommendations of the Martin Report and released its ACT Supermarket Competition Policy Implementation Plan (SCPIP) in January 2010. One of the changes proposed by this policy was that:

⁷⁴ Mr Dimitri Nikias, answer to [Question Taken on Notice No 2](#), received 4 June 2021, p 4.

⁷⁵ [Select Committee on ACT Supermarket Policy](#), August 2012, p 6.

ACTPLA is considering amendments to the Territory Plan to facilitate expansion of supermarkets in Local Centres to a level that is consistent with the role of those Centres in the metropolitan retail structure and that takes account of factors such as scale and bulk of the Centre, supporting a good local amenity, access, traffic and car parking.⁷⁶

4.5 The Select Committee on ACT Supermarket Policy (2012) notes that the:

- retail hierarchy in Canberra of City Centre (Civic), Town Centres (Belconnen, Gungahlin, Tuggeranong, Woden), Group Centres (such as Erindale, Jamison) and Local Centres (local suburb shops) had been established by the National Capital Development Commission (NCDC);⁷⁷ and
- hierarchy determines the distribution of supermarket Gross Floor Area (GFA) across Canberra.⁷⁸

4.6 The Committee notes that the GFA for supermarkets in local centres has fluctuated between 1000 square metres and 1500 square metres across the years that the five DAs have been lodged for Giralang shops.

4.7 Mr Pieter van der Walt, Director, Canberra Town Planning states that:

it is probably worth mentioning that at Canberra Town Planning we work across the ACT, and we have done so for a number of years. At the moment, we are working with four or five different supermarket groups, and not any one of them is interested in a site smaller than 1500 [square] metres.⁷⁹

4.8 Mr Nikias made a number of points in relation to the allowed size of supermarkets in local centres, including:

- the fifth DA approved in 2018, where the supermarket was reduced from 1500 square metres to 1000 square metres, was consistent with ACT government policy at the time;
- Coles, Woolworths, ALDI and Harris Farm have all been approached and they are not interested in operating a supermarket with a 1000 square metre floor area;
- in 2011 there was an approved DA that included a 1500 square metre supermarket with a signed precommitment from Woolworths, redevelopment was commenced but was forced to stop because of legal challenges from other supermarket owners and operators outside Giralang; and

⁷⁶ *Select Committee on ACT Supermarket Policy*, August 2012, p 92.

⁷⁷ *Select Committee on ACT Supermarket Policy*, August 2012, pp 31–32.

⁷⁸ *Select Committee on ACT Supermarket Policy*, August 2012, p 32.

⁷⁹ Mr Pieter van der Walt, *Transcript of Evidence*, 27 May 2021, p 4.

- the change of policy by the ACT Government to provisionally allow supermarkets of up to 1500 square metres was a game changer, prospective supermarket retailers were again contacted and there are encouraging signs of interest.⁸⁰
- 4.9 On 11 May 2021, the Minister announced an increase in the cap on floor area for supermarkets in local centres from 1000 square metres to 1500 square metres.⁸¹
- 4.10 Many submissions from the Giralang community also noted that the size of the supermarket allowed has been an ongoing issue impacting the development of the site:
- Dr Nick Thomson—‘it seems that the main reason the developer is unable to attract an anchor tenant is the unrealistically small size of the space allocated for a supermarket i.e. 1000 m². I would therefore like to suggest that the conditions of the current lease be varied to allow a supermarket of at least 1500 m² in size, a café, and some residential units’;⁸²
 - Mr Chad Swanson—the push for a 1500 square meter [metre] supermarket has caused delays, and understandably Woolworths refused to sign as there is already a supermarket that size close by in Kaleen;⁸³ and
 - Mr Michael Stachow—‘my understanding is that 1000m² is not appealing to a large chain supermarket to take up a lease. If this is 1500m² I understand that a lease may be taken up by Woolworths’.⁸⁴
- 4.11 Ms Roz Chivers made the point that ‘it is interesting to note that while Nikias Nominees have failed to attract a supermarket that the Capital Airport Group have managed to secure an 1000m² IGA supermarket (the Farm IGA) at Denman Prospect, Canberra Outlet Centre has opened the SuperGrocer, GEOCON has secured a Woolies Metro in their Belconnen development and DOMA have secured a Woolies Metro for their new Dickson development. Both Dickson and Belconnen will have two Woolies’.⁸⁵

⁸⁰ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, pp 2–3.

⁸¹ Mr Mick Gentleman MLA, Minister for Planning and Land Management, ‘Helping Canberra’s local shops thrive’, *Media Release*, 11 May 2021

⁸² Dr Nick Thomson, [Submission No 2](#), p [1].

⁸³ Mr Chad Swanson, [Submission No 61](#), p [1].

⁸⁴ Mr Michael Stachow, [Submission No 15](#), p [1].

⁸⁵ Ms Roz Chivers, [Submission No 36](#), p [2].

- 4.12 Mr Nikias noted that in 2011 there was an approved DA for a 1500 square metre supermarket. When plans were modified for the 2018 DA with the smaller supermarket floor area, the same 1500 square metre box was used to allow 50 apartments above. It would be easy to modify a new DA for the increase in supermarket allowed because the shape of the building envelope today is the same building envelope of 2011, which was for a 1500 square metre supermarket.⁸⁶
- 4.13 Mr Nikias also told the Committee that the development would take around 18 months to complete once building work was recommenced. The current development application was granted in July 2018 and was valid for two years. An extension was requested and the application now has a new expiry date for construction to commence by July 2023. If construction had not commenced by July 2023 a new DA would need to be lodged.⁸⁷
- 4.14 Mr Nikias was unable to provide the Committee with a possible commencement date for the project, indicating that he may need to lodge a new DA to cater for the increased size of the supermarket now allowed by the Government.⁸⁸

Finding 3

- 4.15 The Committee finds that the current development approval could be amended to allow a larger supermarket and construction to begin within the time frames of the current approvals.**

DEED OF SETTLEMENT

- 4.16 The Committee heard from Mr Nikias about the deed of settlement.
- 4.17 Mr Nikias confirmed that commitments on the supermarket's size had been made in the settlement of the legal action in relation to the 2011 DA for Giralang shops. Mr Nikias took the question on notice indicated that he would need legal advice as to whether it would be possible to provide the deed of settlement document to the Committee.⁸⁹
- 4.18 The Committee wrote to Mr Nikias requesting that the deed of settlement be provided to it and advised that the Committee has the power to accept documents in-confidence.⁹⁰

⁸⁶ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 9.

⁸⁷ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 14.

⁸⁸ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 14.

⁸⁹ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 8.

⁹⁰ Ms Suzanne Orr MLA, *Transcript of Evidence*, 27 May 2021, p 8.

4.19 Mr Nikias stated in the answer to [Question Taken on Notice No 1](#), that:

the deed of settlement is a private document and the parties to it are bound by obligations of confidentiality. Giralang Property Pty Limited is not in position to make that document available to the Committee.⁹¹

4.20 Mr Matthews AO notes that the Government's 'main contribution to Giralang's loss of shops has been to broker an unpublicised settlement to the long-running litigation. The settlement required the developer to surrender the previously approved Development Application for a 1500 m² supermarket and re-lodge a Development Application for a smaller 1000 m² supermarket. This concession by the developer was in exchange for a commitment by the serial litigants to stop the litigation'.⁹²

4.21 Mr Matthews AO also notes that one of the litigants subsequently sold their IGA which was replaced by an 1800 square metre Coles supermarket.⁹³

4.22 Ms Lesley Irvine was also of the view that the decision to decrease the allowable size of a suburban supermarket to 1000 square metres made by the ACT Government in 2013 was, in her understanding, a concession to the Kaleen and Evatt supermarkets, who agreed they would not oppose a development application with a 1000 square metres supermarket. The result of this however was that Woolworths withdrew their expression of interest as the anchor supermarket tenant for the Giralang shops development.⁹⁴

Finding 4

4.23 The committee has significant concerns the deed of settlement signed by the owner of the Giralang Shops site applies limitations to the size of the supermarket permissible and could jeopardise the potential to secure a supermarket tenant.

4.24 Mr Nikias told the Committee that he would love to see Harris Farms here, he had tried to engage them as a supermarket tenant, however they indicated that they would need to open three sites in Canberra at the same time, and that they have had trouble finding these.⁹⁵

4.25 Ms Roz Chivers also made the point that in was her understanding Harris Farm has considered opening in Canberra.⁹⁶

⁹¹ Mr Dimitri Nikias, answer to [Question Taken on Notice No 1](#), received 4 June 2021, p 1.

⁹² Mr Ken Matthews AO, [Submission No 6](#), p [2].

⁹³ Mr Ken Matthews AO, [Submission No 6](#), p [2].

⁹⁴ Ms Lesley Irvine, [Submission No 31](#), p [2].

⁹⁵ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 6.

⁹⁶ Ms Roz Chivers, [Submission No 36](#), p [2].

Recommendation 10

4.26 The Committee recommends that the ACT Government write to seek advice on whether:

- **Harris Farm Supermarkets would consider opening in Canberra and in Giralang; and**
- **Woolworths, Aldi and IGA would consider opening in Giralang.**

5 GIRALANG COMMUNITY

5.1 The committee noted that many of the submissions to the inquiry demonstrated a lack of confidence in both the ACT Government and the developer Nikias Diamond to find a solution to get the Giralang shops built.

5.2 Mr Ross Calvert states that:

the case for the restoration of shops at Giralang has become even stronger in recent years. Infill development in the local district continues. To the south, the development of Lawson has expanded by thousands the potential shopping centre catchment. Planned development of the former CSIRO land to the immediate west will also add thousands to the potential catchment;⁹⁷ and

while it is true that the developer has also failed in its responsibility to deliver a restored shopping centre, it is not for want of trying that this has occurred. The Government is elected to plan and deliver local community services to all Canberrans. In this regard the Government has conspicuously failed the residents of Giralang. In order to fulfil its responsibility to the residents of Giralang it is imperative that the Government takes meaningful action to ensure that the redevelopment of the local shopping centre proceeds in timely fashion.⁹⁸

5.3 Mr Calvert also told the Committee that the Giralang Residents Action Group (GRAC) want a retail facility, with or without a residential component, built in the suburb as soon as possible. GRAC would also like to see all the relevant people pulling together to get this to happen, including the Government, developer and community.⁹⁹

5.4 Mr William Burmester states that:

unless the Committee adopts a specific intended outcome for the inquiry, the committee's deliberations, efforts, and work will simply continue the failings of the past. Nothing will result from the investigation, and residents will continue to be without local shops; and

it is clear that current planning policies, settings arrangements and commercial incentives in regard to local shops are failing. If they were not, the inquiry would not be required and suburbs like Giralang would have thriving local shopping centres at the heart of their communities¹⁰⁰

⁹⁷ Mr Ross Calvert, [Submission No 63](#), p 2.

⁹⁸ Mr Ross Calvert, [Submission No 63](#), p 1.

⁹⁹ Mr Ross Calvert, *Transcript of Evidence*, 1 July 2021, p 54.

¹⁰⁰ Mr William Burmester, [Submission No 46](#), p [1].

5.5 Dr Chris Aulich told the Committee that the developer had made promises but has not delivered on these, particularly in relation to traffic flow and parking in the area.¹⁰¹

5.6 Dr Aulich was of the view that:

there are a number of issues which the Giralang experience raises, but primarily it is the failure of government to lead in both assessing community needs and in oversighting plans to meet those needs. Instead, the government has outsourced the leadership role to a private developer who, quite naturally, has a primary focus on the bottom line and not necessarily on meeting community needs. To compound the problem, the government has not, until now, held the developer to publicly account for his inaction and neglect. It is clear that the developer's company has not undertaken the provision of community facilities which up to now has been very clearly stated by the community: a supermarket with accompanying shops.¹⁰²

5.7 Ms Gibson stated that the last thing the community wants is for the site to continue the way it is, the second last thing is to have shops built that are not viable, it would be 'devastating for the community if it was developed and, for whatever reason, it did not work'.¹⁰³

Finding 5

5.8 The Committee finds that some people within the Giralang community have lost confidence in the owner of Giralang shops site to deliver the shops development.

Finding 6

5.9 The Committee finds that the Giralang community would like the ACT Government to take a more active role in helping to resolve issues currently holding up the development.

SITE MAINTENANCE

5.10 The committee noted the concern from residents about the safety and security of the site.

5.11 Community concerns outlined by submitters to the inquiry include:

¹⁰¹ Dr Chris Aulich, *Transcript of Evidence*, 1 July 2021, p 57.

¹⁰² Dr Chris Aulich, [Submission No 60](#), p [1].

¹⁰³ Ms Anne Gibson, *Transcript of Evidence*, 1 July 2021, p 66.

- Ms Amber Noble—‘the site remains to be a derelict, neglected eyesore plaguing the entrance to our wonderful primary school and sporting fields’;¹⁰⁴
- Mr Shaun Masters—I have grave concerns for both the safety of the community with such a derelict site in close proximity to the Giralang Primary School ... the current site is littered with building rubble and rubbish and the fencing surrounding is insecure and easily accessible’;¹⁰⁵
- Ms Kathy Dunn—‘every day for us means driving past the derelict building site in the heart of the suburb. The site is overgrown, untidy, unsightly and poses a significant safety risk in front of the primary school. The situation as well as the derelict site itself is demoralising and beyond frustrating’;¹⁰⁶
- Ms Anne Grant—‘the site is a major abandoned construction site ... it is an eye-sore for neighbouring properties and negatively impacts the amenity of the area’;¹⁰⁷
- Mr Scott Bamford—‘regularly accessing the school and ovals nearby the site there does not appear to be any routine monitoring of the site or maintenance works being conducted by the Builder. If the Masters Builders had an award for worst site safety/tidiness, the shops site would be un-disputed winner – it is one of the worst in Canberra’;¹⁰⁸ and
- Ms Gibson—‘for over 16 years the site has remained an unfinished construction site and is now an overgrown, commercial-waste dumping ground – not to mention the accumulation of household items such as couches, mattresses, electronics etc., the fact that the site is dangerous and not secure and can be easily accessed through gaps in the fence just metres from the primary school – and is an outright eyesore and a serious safety concern for school children and the broader community’.¹⁰⁹

5.12 Ms Gibson reported that since her submission and after making a formal complaint, the site has been cleaned up and a new, more secure fence had been erected.¹¹⁰

5.13 Mr Nikias noted the community concerns raised in submissions and committee concerns about the presentation of the site and indicated fencing would be upgraded to ensure that the site is tidy and secure.¹¹¹

¹⁰⁴ Ms Amber Noble, [Submission no 69](#), p [1].

¹⁰⁵ Mr Shaun Masters, [Submission No 16](#), p [1].

¹⁰⁶ Ms Kathy Dunn, [Submission No 41](#), p [1].

¹⁰⁷ Ms Anne Grant, [Submission No 55](#), p [1].

¹⁰⁸ Mr Scott Bamford, [Submission No 66](#), p [1].

¹⁰⁹ Ms Anne Gibson, [Submission No 14](#), p [2]

¹¹⁰ Ms Anne Gibson, *Transcript of Evidence*, 1 July 2021, p 55.

¹¹¹ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 3.

Recommendation 11

5.14 The Committee recommends that the owner of the Giralang Shops site outline how the site will be tidied and secured in accordance with unmet commitments by the owner of the shops site and to a standard agreeable to the Giralang Community.

COMMUNITY CONSULTATION

- 5.15 Mr Swanson states that not having a supermarket in Giralang is not an issue for him, there is one nearby in Kaleen, but the issues around the development need to be discussed. The Minister should not use his call-in powers to bypass community consultation.¹¹²
- 5.16 Ms Helen Gladman stated that ‘I have engaged in some of the consultative processes. I have attended meetings and spoken with local members of the Legislative Assembly when opportunities arise. Frankly even this minimal engagement with the process has felt futile. People have worked longer and harder than I have to get traction on this process and I imagine their sense of futility is greater’.¹¹³

PUBLIC REALM IMPROVEMENTS

- 5.17 Ms Gibson notes that the developer gave commitments to the Giralang community as part of the proposed development that the carpark and school pickup/drop-off zones would be redesigned. The school has nearly doubled in size in the past 20 years, and the current pickup/drop-off arrangements are an accident waiting to happen.¹¹⁴
- 5.18 Ms Gibson also notes that the proposed development for the adjacent Jewish School (which sits between Giralang Primary School and the shops site), which would add extra complexity to the site, meaning access arrangements for all three sites needs to be considered to ensure they are safe and complimentary to one another.¹¹⁵
- 5.19 Mr Bamford notes that the redevelopment needs to include adequate parking for the shops, school and ovals, improved lighting and walkways, and proper traffic controls.¹¹⁶

¹¹² Mr Chad Swanson, *Transcript of Evidence*, 1 July 2021, p 59.

¹¹³ Ms Helen Gladman, [Submission No 45](#), p [1].

¹¹⁴ Ms Anne Gibson, [Submission No 14](#), p [2]

¹¹⁵ Ms Anne Gibson, [Submission No 14](#), p [2]

¹¹⁶ Mr Scott Bamford, [Submission No 66](#), p [2]

5.20 Mr Burmester told the Committee that:

access to the school, with the additional traffic from the shops and apartments, was a key issue in any public forum that has ever been held. It is one issue that has always come to the fore. I think that the community has probably accepted what they see as inadequate provisions simply because they are so desperate to get the shops underway. Trying to get a bigger and better solution to the traffic seems just another problem that might hold the process up. That is certainly my view. It seems to me that, in fact, there is an opportunity for a more radical solution to be developed by people who know a lot more about traffic control. Creating a second entrance to the school and creating a one-way flow of traffic into that precinct seems, to me, worth pursuing.¹¹⁷

5.21 The Committee notes that when the Minister for Planning and Land Management approved the DA using his ministerial call-in powers that:

New parking spaces will also be provided on Menkar Close; and the existing carpark for Giralang Primary School will be improved to provide a new drop-off arrangement and new parking spaces.¹¹⁸

5.22 Mr Nikias confirmed that improvements to the Giralang school car park, a bike shed and some footpaths were to be provided by the company as part of the development approval, this work will be done as part of the development once it commences.¹¹⁹ Mr Hikias also noted that the costs of the car park and footpaths is significant, being about \$700,000 in total, the work cannot be completed unless it is part of the development proceeding as a whole.¹²⁰

5.23 Mr Burmester also told the Committee that the Directorate had proposed refurbishment of the cycle paths around the school as part of the current DA. The Directorate indicated there were restraints on work due to an existing path near the creek and drainage issues. Mr Burmester expressed a view that the Government is responsible for road access and need to look at better solutions for traffic problems in the area.¹²¹

5.24 Dr Thomson notes that the ACT is a leader in relation to renewable energy and emissions reduction, there is an opportunity in the Giralang shops developer, with the assistance of the ACT Government, to construct a building that is energy efficient and environmentally sustainable.¹²²

¹¹⁷ Mr Bill Burmester, *Transcript of Evidence*, 1 July 2021, p 58.

¹¹⁸ Ms Suzanne Orr MLA, *Transcript of Evidence*, 27 May 2021, p 24.

¹¹⁹ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, pp 24–25.

¹²⁰ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 26.

¹²¹ Mr Bill Burmester, *Transcript of Evidence*, 1 July 2021, p 58.

¹²² Dr Nick Thomson, *Transcript of Evidence*, 1 July 2021, p 61.

5.25 The Committee noted that a contribution to assist with the provision of a fence for the Giralang Garden Collective was offered, however the assistance was never provided. The fence has subsequently been built through other means.

5.26 Mr Nikias confirmed that he had been approached about a fence however:

the fence turned out to be a 2,400 high fence; it was completely different from what I had envisaged. I was happy to contribute and I did not hear anything back. I cannot say a hundred per cent, but looking at the submissions I see how important that is. I was just thinking of a normal fence surrounding a veggie patch; it turned out to be a bit bigger.¹²³

5.27 Mr Nikias noted that ideas about possible interim uses and activities on the site would be sought from the community, noting that quite a few submissions suggested temporary services such as food vans and pop-up cafes.¹²⁴

Recommendation 12

5.28 The Committee recommends that the owner of the Giralang Shops site commits to a date for the timely delivery of the public realm improvements which they indicated would be delivered as part of the proposed development.

Recommendation 13

5.29 The Committee recommends that the owner of the Giralang Shops Site and the ACT Government report to the committee on progress of the recommendations in the interim report by July 2022.

¹²³ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 24.

¹²⁴ Mr Dimitri Nikias, *Transcript of Evidence*, 27 May 2021, p 3.

6 CONCLUSION

- 6.1 The Committee resolved to complete an interim report on 18 November 2021.
- 6.2 The Committee will be seeking further information from both the Government and the Developer in response to the recommendations and findings in this report in 2022 on the progress of the Giralang shops development with a view to writing a final report on the issues raised in petition 4-21.

Jo Clay MLA

Chair

9 December 2021

APPENDIX A - WITNESSES

27 MAY 2021

- Mr Dimitri Nikias, Director, Nikias Diamond
- Mr Pieter Van Der Walt, Director, Canberra Town Planning

17 JUNE 2021

- Mr Mick Gentleman MLA, minister for Planning and Land Management
- Mr Ben Ponton, Director-General, Environment, Planning and Sustainable Development Directorate
- Mr George Cilliers, Executive Branch Manager, Environment, Planning and Sustainable Development Directorate
- Mr Nick Lhuede, Acting Executive Branch Manager, Building and Construction, Access Canberra, CMTEDD

1 JULY 2021

- Dr Chris Aulich
- Mr Bill Burmester
- Mr Paul Calvert
- Ms Anne Gibson
- Ms Anne Grant
- Mr Chad Swanson
- Dr Nick Thomson
- Mr Shane Turnbull

APPENDIX B – SUBMISSIONS

Submission Number	Submitter	Received
1	Dr Jenny Thomson	15.03.2021
2	Dr Nick Thomson	15.03.2021
3	Ms Simone Hijazi	18.03.2021
4	Ms Carly Fiumara	19.03.2021
5	Ms Giselle Cruzado	19.03.2021
6	Mr Ken Matthews AO	19.03.2021
7	Ms Sarah Crooks	20.03.2021
8	Mr David Ball	20.03.2021
9	Ms Catherine Vaughan Turnbull	22.03.2021
10	Mr Shane Turnbull	23.03.2021
11	Ms Briana Lloyd	23.03.2021
12	Mr Robert Kyle	24.03.2021
13	Mr James Forwood	24.03.2021
14	Ms Anne Gibson	24.03.2021
15	Mr Michael Stachow	24.03.2021
16	Mr Shaun Masters	24.03.2021
17	Ms Phaedra Eayrs	24.03.2021
18	Ms Margaret Matthews	24.03.2021
19	Mr Brett Goyne	31.03.2021
20	Mr Austin Kenney	31.03.2021
21	Mr Phil Rabi	01.04.2021

Submission Number	Submitter	Received
22	Mr Joe Hedger and Ms Louise Taylor	01.04.2021
23	Mr Sean Minney	01.04.2021
24	Ms Veneta Amies	02.04.2021
25	Ms Penny Costello	02.04.2021
26	Mr Greg Gurr	03.04.2021
27	Ms Jane Harms	04.04.2021
29	Ms Jenny Millea	04.04.2021
30	Mr Aidan Heerdegen and Ms Janelle Kennard	05.04.2021
31	Ms Lesley Irvine	06.04.2021
32	Mr Owen Ferris	06.04.2021
33	Mr Richard Mathe	06.04.2021
34	Ms Courtney Hayden	06.04.2021
35	Mrs Patrice and Mr John Simmons	06.04.2021
36	Ms Roz Chivers	06.04.2021
37	Ms Maxine Berryman	06.04.2021
38	Mr Sean Macintyre	06.04.2021
39	Ms Denise Kay	07.04.2021
40	Ms Eve Wisowaty	07.04.2021
41	Ms Kathy Dunn	07.04.2021
42	Ms Nichola Aitken	07.04.2021
43	Ms Amy Pepper	07.04.2021
44	Mr Murray Brown	07.04.2021

Submission Number	Submitter	Received
45	Ms Helen Gladman	07.04.2021
46	Mr William Burmester	07.04.2021
47	Mr Christopher Dennis	07.04.2021
48	Mr Craig Windross	07.04.2021
49	Mr Greg and Mrs Lee Hollands	07.04.2021
50	Ms Claire Reynolds	07.04.2021
51	Dr Katie Ryan Calvert	07.04.2021
52	Ms Briony MacGregor	07.04.2021
53	Ms Megan Mackenzie	07.04.2021
54	Ms Julie Brandon	08.04.2021
55	Ms Anne Grant	08.04.2021
56	Ms Felicity Goyne	08.04.2021
57	Mr Paul Culvert	08.04.2021
58	Ms Elly Mackay	08.04.2021
59	Ms Kelly Baseler	08.04.2021
60	Dr Chris Aulich	08.04.2021
61	Mr Chad Swanson	08.04.2021
62	Ms Kathryn Dan	08.04.2021
63	Mr Ross Calvert	08.04.2021
64	Mr David Pollard	08.04.2021
65	Ms Lee-Ann Swift	08.04.2021
66	Mr Scott Bamford	12.04.2021

Submission Number	Submitter	Received
67	Ms Domenica O’Dea	12.04.2021
68	Associate professor Tanya Jakimow	10.05.2021
69	Ms Amber Noble	11.05.2021

APPENDIX C – QUESTIONS TAKEN ON NOTICE

Questions taken on Notice 27 May 2021

No.	Hearing date	Asked by	Witness	Subject	Answer date
1	27.05.2021	Ms Orr MLA	Mr Dimitri Nikias, Director, Nikias Diamond	Deed of settlement	04.06.2021
2	27.05.2021	Ms Orr MLA	Mr Dimitri Nikias, Director, Nikias Diamond	EPSDD approval for extension to DA date of commencement	04.06.2021
3	27.05.2021	Ms Orr MLA	Mr Dimitri Nikias, Director, Nikias Diamond	Rates	04.06.2021
4	27.05.2021	Ms Orr MLA	Mr Dimitri Nikias, Director, Nikias Diamond	Completion date for development	04.06.2021
5	27.05.2021	Ms Orr MLA	Mr Dimitri Nikias, Director, Nikias Diamond	Site ownership	04.06.2021

Questions taken on Notice 17 June 2021

No.	Hearing date	Asked by	Directorate/ Portfolio	Subject	Answer date
6	17.06.21	Mr Parton MLA	EPSDD	Lease terminations	30.06.2021
7	17.06.21	Ms Orr MLA	EPSDD	DA Extensions	30.06.2021
8	17.06.21	Ms Orr MLA	EPSDD	Extension criteria	30.06.2021
9	17.06.21	Ms Clay MLA	EPSDD	Controlled activity complaints	30.06.2021

No.	Hearing date	Asked by	Directorate/ Portfolio	Subject	Answer date
10	17.06.21	Ms Clay MLA	EPSDD	Site history—Controlled activity complaints	30.06.2021
11	17.06.21	Ms Clay MLA	EPSDD	Notice of decision and conditions	30.06.2021
12	17.06.21	Ms Clay MLA	EPSDD	Work Health and Safety inspections on site	30.06.2021
13	17.06.21	Ms Clay MLA	EPSDD	Shopping centre refurbishment program	30.06.2021